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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,681	12/08/2003	Martin Patterson	15437-0605	3288
29989	7590	12/04/2006	EXAMINER	
HICKMAN PALERMO TRUONG & BECKER, LLP			PEUGH, BRIAN R	
2055 GATEWAY PLACE			ART UNIT	
SUITE 550			PAPER NUMBER	
SAN JOSE, CA 95110			2187	

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/731,681

Applicant(s)

PATTERSON ET AL.

Examiner

Brian R. Peugh

Art Unit

2187

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,10,11 and 20-24 is/are rejected.
- 7) ☒ Claim(s) 2-9, and 12-19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Response to Amendment

This Office Action is in response to applicant's communication filed September 8, 2006 in response to PTO Office Action dated June 2, 2006. The applicant's remarks and amendment to the specification and/or claims were considered with the results that follow.

Claims 1-24 have been presented for examination in this application. In response to the last Office Action, claims 1-6, 8, 9, 11-16, 18, 19, and 21-24 have been amended.

Please note the change in Examiner attributed to the Application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 10-11, and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Meyer (US Patent No. 5,898,891).

As per claim 1, Meyer discloses a machine implemented method for replicating content of a source disk to at least one of a plurality of target disks **[transferring data from one hard disk to another hard disk (column 2, lines 39-40)]**, comprising: establishing at most one producer process for reading content of a source disk into a buffer **[transferring data from the one disk to a memory array (column 2, lines 40-41)]**; establishing at least one consumer process for reading content from the buffer and writing the content to a target disk **[transferring data from the memory array to the other disk (column 2, lines 41-43)]**; and coordinating concurrent synchronous copy operations by the producer process from the source disk to the buffer and by the at least one consumer process from the buffer to the target disk **[data to be written to a tape drive while data was read from a disk (column 3, lines 1-4)]**.

As per claim 10, Meyer discloses determining whether the process is a producer or a consumer process by detecting the presence of other disk replication processes in the system **[inherent in the art, since Meyers teaches disk to disk data transferring]**.

As per claims 11, and 20-22, claims 11, and 20-22 encompass the same scope of the invention as those of claims 1, and 10. Therefore, claims 11, and 20-22 are rejected for the same reasons as stated above with respect to claims 1, and 10.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyers as applied to claim 1 above and further in view of below.

It is noted that Meyers does not disclose the data replication in the network environment. However, the examiner asserts that it would have been obvious to one ordinary skill in the art at the time the invention was made to apply the data replication as being claimed in claim 1 in a system with having a first computer (first node) and a second computer (second node) which are connected through a network. A recitation directed to the manner in which a claim is intended to be used does not distinguish the claim from the prior art if prior art has the capability to do so (See MPEP 2114 and Ex Parte Masham, 2 USPQ2d 1647 (1987)).

Allowable Subject Matter

Claims 2-9, and 12-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 9/8/06 have been fully considered but they are not persuasive. Applicant's arguments are directed towards the amended claim subject matter which illustrates copying the data from a source disk to a target disk, which the Applicant alleges is not taught by Meyer. However, the Examiner disagrees, in that Meyer teaches that the storage systems for the source and targets may both be disk systems [col. 4, lines 10-13 & 19-23].

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

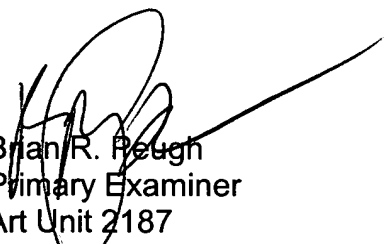
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Peugh whose telephone number is (571) 272-

4199. The examiner can normally be reached on Monday-Thursday from 7:00am to 4:30pm. The examiner can also be reached on alternate Friday's from 7:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Sparks, can be reached on (571) 272-4201. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Brian R. Peugh
Primary Examiner
Art Unit 2187
11/24/06